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**IN THE  
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:

A.R.B., A Child Alleged to be a  
Delinquent Child,

Appellant-Defendant,

VS.

STATE OF INDIANA.

Appellee-Plaintiff.

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No. 71A03-0611-JV-00521

APPEAL FROM THE ST. JOSEPH PROBATE COURT

The Honorable Barbara J. Johnston, Magistrate

The Honorable E. Brueseke, Magistrate

The Honorable Peter J. Nemeth, Judge

Cause No. 71J01- 0601-JD-9

**April 3, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

A.R.B. appeals the juvenile court's order requiring him to pay \$842.20 in restitution. Finding that the State presented reasonable evidence of the victim's loss, we affirm the judgment of the juvenile court.

## **Facts and Procedural History**

Sometime between April 1, 2005, and April 9, 2005, A.R.B. and four other individuals unlawfully entered Dr. Slawomir Fryska's ("Dr. Fryska") residence and stole many items while Dr. Fryska and his family were away on vacation. A.R.B. and three of the four other individuals involved in the theft were charged as juveniles, and the fifth individual involved was charged as an adult. Specifically, the State alleged that A.R.B. was a delinquent child for committing an act that would be burglary as a Class B felony<sup>1</sup> if committed by an adult. On January 2, 2006, the trial court accepted a plea agreement in which A.R.B. admitted to the offense of residential entry, a Class D Felony,<sup>2</sup> in return for which the State agreed to dismiss the burglary charge against A.R.B. As part of his plea agreement, "[A.R.B.] agree[d] to be responsible for one-fifth of the restitution owed." Appellant's App. p. 29. The amount of the restitution was to be determined at a later date. At the dispositional hearing, the trial court placed A.R.B. on strict and indefinite probation and set forth numerous conditions of probation. On October 3, 2006,

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<sup>1</sup> Ind. Code § 35-43-2-1.

<sup>2</sup> Ind. Code § 35-43-2-1.5.

the trial court held a restitution hearing and entered an Order on Restitution requiring A.R.B. to pay \$842.20 in restitution.<sup>3</sup> A.R.B. now appeals.

### **Discussion and Decision**

A.R.B. raises one issue on appeal. He argues that the trial court erred in ordering him to pay \$842.20 in restitution because the State failed to provide reasonable evidence of Dr. Fryska's actual loss. We disagree.

An order of restitution is a matter within the trial court's discretion, and this Court should reverse only upon a showing of an abuse of that discretion. *M.L. v. State*, 838 N.E.2d 525, 528 (Ind. Ct. App. 2006), *reh'g denied, trans. denied*. An abuse of discretion occurs when the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

Indiana Code § 31-37-19-5(b)(4) provides that the trial court may "[o]rder the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing." Here, the record shows that a formal repair estimate was presented at the restitution hearing and all parties had the opportunity to review the estimate.<sup>4</sup> Additionally, A.R.B.'s attorney admitted that the "[S]tate has . . . an estimate for the repair." Appellant's App. p. 67. Finally, the formal repair estimate specifically stated that Dr. Fryska suffered a total loss amounting to

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<sup>3</sup> In separate proceedings, each of the four other individuals involved were ordered to pay \$842.20 in restitution.

<sup>4</sup> To substantiate that evidence existed regarding Dr. Fryska's loss, the trial court stated "[w]e don't just have somebody writing down on a piece of paper this is what I paid for the door, we have an actual estimate . . . ." Appellant's App. p. 73.

\$4,211.00. It is well settled that “[t]he [evidence] rules, other than those with respect to privileges, do not apply in . . . [p]roceedings relating to . . . sentencing, probation, or parole.” Ind. Evidence Rule 101(c); *see also White v. State*, 756 N.E.2d 1057 (Ind. Ct. App. 2001) (stating “[w]hen a trial court makes its sentence decision, the rules of evidence, other than those concerning matters of privilege, do not apply.”), *trans. denied*. Because the rules of evidence do not apply, the formal repair estimate, provided by Dr. Fryska to the trial court and reviewed by all of the parties involved, served as reasonable evidence of his loss. Therefore, the trial court did not abuse its discretion because the State provided reasonable evidence of Dr. Fryska’s loss.<sup>5</sup>

Affirmed.

BAILEY, J., and BARNES, J., concur.

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<sup>5</sup> We note that A.R.B.’s attorney moved the trial court for a continuance of the restitution hearing to allow Dr. Fryska to be present and cross-examined with regard to the necessity of replacing his patio door. However, because A.R.B. does not challenge the trial court’s denial of that motion on appeal, we do not address it in our opinion.